vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.854 OF 2006
IN
SUMMARY SUIT NO.484 OF 2005

M/s.Swastik Oil Products
Mfg. Co. Pvt. Ltd. ... Plaintiff

V/s.

M/s.Bharat Petroleum Corporation Ltd. ... Defendant

Mr.K.R. Tiwari for Plaintiff
Ms.Sheeja John i/b M/s.M.P. Savla & Co. for Defendant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **MARCH 23, 2006**

P.C.:

. This Motion has been taken out for recalling the order passed on 6.3.2006 passed in Summons for Judgment No.636 of 2005. The affidavit in support of the Motion shows that the advocate for the applicant was engaged before the Division bench of this Court and therefore, could not remain present when the matter was called out.

2. The learned Advocate for the plaintiff cites the judgment of the Division Bench of this Court in the case of *Bombay Enamel Works v/s. Purshottam S. Somaiya,* **AIR 1975 BOMBAY 128** in support of his contention that once conditional leave to defend is granted, it cannot be revoked and the defendant has to file reply. In my view, this judgment has no application. The Motion is filed for recalling the order in view of the fact that the advocate for the Defendant was not heard, although

the defence to the Summons for Judgment was on record.

3. In view of this statement contained in the affidavit in support of the Motion, Motion is allowed.

4. Summons for Judgment to come up on 10.4.2006.